United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 07-2330**
	)	**Issued: March 3, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On or about August 18, 2007 appellant filed a timely appeal from the January 18 and August 9, 2007 merit decisions of the Office of Workers' Compensation Programs, which denied compensation for wage loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's disability for work beginning November 15, 2001 was causally related to his October 15, 2001 employment injury.

FACTUAL HISTORY

On October 15, 2001 appellant, then a 67-year-old temporary part-time food service worker, sustained an injury in the performance of duty: "While unloading bags of trash

something pull or string in the low part of my back, while lifting bags." The Office accepted his claim for aggravation of lumbar strain.[1]

On October 16, 2001 appellant presented a note from a physician's assistant indicating light duty until October 30, 2001. His supervisor assigned light duty: "I assigned [him] to wash soup bowls, later I assigned [him] to scrapping, while scrapping [he] is not required to lift more than [two to three] pounds." On November 1, 2001 another physician's assistant wrote: "Due to back injury [appellant] needs to have light work duties only. No lifting, bending, kneeling, stooping over or overhead work. [Appellant] to be reevaluated after x-rays in [two] weeks." On November 19, 2001 Dr. Hameed Zafar, a family physician, reported that appellant could perform modified duty: Appellant was to avoid bending, crouching, kneeling and squatting and he was permitted occasionally to push and pull and lift 10 pounds.

On November 15, 2001 the employing establishment notified appellant that his temporary employment was being terminated effective the close of business on December 7, 2001. Appellant was immediately placed in a paid administrative leave status through December 7, 2001, on which date he was separated for cause.[2] On December 20, 2001 the Chief of the Nutrition and Food Service reported:

> "On November 20, 2001 I received a document from [appellant] dated November 15, [sic] 2001. The medical certificate places [him] on light duty with no lifting, bending, kneeling, stooping over or overhead work. If [appellant] were on duty we would have provided him with a position to accommodate his light[-]duty requirements. Since he was in an administrative leave status, [he] was in a paid leave status not associated with his injury claim."

On a form report dated December 7, 2001, Dr. Alan Charnelle, a neurologist, related appellant's history of injury. He diagnosed lumbar spine sprain, degenerative disease, right hip degenerative disease, rule out radiculopathy. Dr. Charnelle indicated with an affirmative mark that his findings and diagnosis were consistent with appellant's account of injury. He reported that appellant was temporarily totally disabled until December 15, 2001 "estimated." Dr. Charnelle obtained an electromyogram and nerve conduction study on December 11, 2001, which showed lumbar spine radiculopathy at the L3-4, L4-5 and L5-S1 levels.

On January 23, 2002 Dr. Hrair E. Darakjian, an orthopedic surgeon, diagnosed an L4-5 right-sided disc herniation with radiculitis, which he stated appeared to be an acute injury. He extended appellant's disability for two weeks. On a form report dated February 14, 2002 Dr. Darakjian indicated with an affirmative mark that appellant's L4-5 herniated disc with radiculitis was a result of employment activity. He indicated that appellant was totally disabled for work from November 14, 2001 through the present. On May 17, 2002, however, Dr. Darakjian indicated on another form report that appellant's lumbar radiculitis was not the result of employment activity.

[1] Appellant injured his back in Korea in 1955 and had a service-connected disability rating of 70 percent.

[2] In 2006, appellant would claim that he resigned his job on November 14, 2001.

Appellant filed a claim for wage-loss compensation beginning November 15, 2001.[3]

In a decision dated January 18, 2007, the Office denied appellant's claim for compensation. The Office found that appellant was not physically unable to perform light duty due to residuals of the work injury and found no evidence that he was terminated because he was physically unable to perform his assigned duties.

Appellant requested an oral hearing before an Office hearing representative, which was held on May 22, 2007. He submitted a January 18, 2002 letter from the employing establishment:

> "The following information is for use in verifying income from the [employing establishment.]
>
> "This is to verify that [appellant] is rated 'Permanently and Totally' disabled due to nonservice-connected [sic] causes. Effective December 1, 2001 and presently he receives $583.00 monthly in [employing establishment] disability pension benefits."

Appellant also submitted, among other things, a January 23, 2002 form report from Dr. Darakjian, who diagnosed L4-5 herniated nucleus pulposus and stenosis. Dr. Darakjian indicated with an affirmative mark that appellant's condition was caused or aggravated by employment activity. He also indicated that appellant was totally disabled for work from November 14 through December 31, 2001.[4]

In a decision dated August 9, 2007, an Office hearing representative affirmed the denial of appellant's claim for compensation beginning November 15, 2001.

LEGAL PRECEDENT

The Federal Employees' Compensation Act pays compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[5] "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.[6] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[7]

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[3] Appellant worked four hours on November 14, 2001. November 15 and 16, 2001 were his days off. Appellant was credited with paid administrative leave beginning November 17, 2001.

[4] Dates in the report, including the date of the doctor's signature, appear to have been rewritten or changed or corrected without Dr. Darakjian's signature.

[5] 5 U.S.C. § 8102(a).

[6] 20 C.F.R. § 10.5(f) (1999).

[7] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[8] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[9] This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.[10] When a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[11]

ANALYSIS

The issue raised by appellant's claim for wage-loss benefits is whether any disability for work on or after November 15, 2001 was causally related to October 15, 2001, when he unloaded bags of trash.

Appellant initially submitted reports from a physician's assistant. However, it is well established that a physician's assistant is not a "physician" as defined under the Act.[12] Causal relationship is a medical issue and can be established only by the medical evidence. To support his claim, appellant has submitted several medical form reports from a physician's assistant but these reports are insufficient to establish causal relationship. Moreover, the reports from Dr. Zafar, the family physician, Dr. Charnelle, the neurologist, and Dr. Darakjian, the orthopedic surgeon, do not provide a complete or accurate factual and medical history or demonstrate an understanding of what happened on October 15, 2001. They do not address appellant's duties and physical limitations after October 15, 2001 or acknowledge that the employing establishment placed appellant on paid administrative leave effective November 15, 2001 pending his separation for cause on December 7, 2001. The medical evidence lacks a sound explanation of how the October 15, 2001 aggravation of lumbar strain became totally disabling on or about November 15, 2001, such that appellant could no longer physically perform his assigned light duties.

The medical evidence of record is inconsistent on this issue. Dr. Zafar reported on November 19, 2001 that appellant could perform modified duties. But Dr. Darakjian reported on January 23 and February 15, 2002 that appellant was totally disabled as of November 14, 2001. On May 17, 2002 he contradicted himself by indicating that appellant's disabling lumbar radiculitis was not the result of his employment activities.

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[8] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[9] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[10] *See John A. Ceresoli, Sr.*, 40 ECAB 305 (1988). Causal relationship is medical in nature and can be established only by medical evidence. *Ausberto Guzman*, 25 ECAB 362 (1974).

[11] *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

[12] *See* 5 U.S.C. § 8101(2). *See also Allen C. Hundley*, 53 ECAB 551 (2002).

Appellant submitted a narrative report from Dr. Darakjian dated January 23, 2002, who stated that appellant's L4-5 right-sided disc herniation with radiculitis appeared to be an acute injury. Dr. Darakjian did not explain and he did not relate this disc herniation to what happened on October 15, 2001.[13] The Board finds that this report is not well reasoned and offers little if any support for appellant's claim for compensation.

Appellant also submitted a January 18, 2002 letter from the employing establishment indicating that he was rated "Permanently and Totally" disabled and that he was receiving, disability pension benefits effective December 1, 2001. His disability rating or entitlement to disability pension benefits is not determinative of his entitlement to workers' compensation benefits under the Act.[14] To establish entitlement to compensation benefits under the Act, the weight of the medical evidence must establish that appellant was totally disabled for work on or about November 15, 2001 as a result of his October 15, 2001 employment injury, not as a result of his preexisting and significant service-related low back condition. The medical evidence submitted does not establish the necessary causal relationship.

Because the medical evidence does not establish the critical element of causal relationship, the Board will affirm the Office decisions denying compensation.[15]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his disability for work beginning November 15, 2001 was causally related to his October 15, 2001 employment injury.

[13] The Office accepted appellant's claim for aggravation of lumbar strain, not a herniated disc. If appellant claims compensation as a result of a disc herniation, he bears the burden of proof to establish through well-reasoned medical opinion evidence that any such disc herniation was causally related to what happened on October 15, 2001.

[14] *See Freddie Mosley*, 54 ECAB 255 (2002); *Raj B. Thackurdeen*, 54 ECAB 396 (2003).

[15] In his May 17, 2002 report, appearing at page 257 of the record, Dr. Darakjian indicated with a mark that appellant's lumbar radiculitis was not caused or aggravated by employment activity. On appeal, however, appellant submitted a copy of this same report with the negative mark "whited out" and replaced with an affirmative mark. There are other alterations. None of the alterations are signed by Dr. Darakjian.

ORDER

IT IS HEREBY ORDERED THAT the August 9 and January 18, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 3, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board